

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM BRANCH

Plaintiff

V.

RUSSIAN, et al.,

Defendants

[illegible]

No. 1:00-CV-1728

(Judge Conner)

ELECTRONICALLY FILED

DEFENDANTS' MOTION FOR CONTINUANCE OF TRIAL

Defendants, by their attorneys, hereby move the Court to continue the trial in the above-captioned case until after their motion for summary judgment has been resolved. In support of their motion defendants state the following:

1. This is a civil rights action by a state prisoner which alleges *inter alia* unlawful dismissal from prison employment, interference with the right to practice religion, retaliation, and the denial of a fair misconduct hearing.

2. The complaint names as defendants eighteen individuals who are either present or former employees of the Department of Corrections.

3. Defendants moved for summary judgment on December 31, 2003.

The grounds for their motion are the bar of the applicable statute of limitations and failure to state a claim upon which relief can be granted.

4. In response to defendants' summary judgment motion, plaintiff initially filed what was in effect a Rule 56(f) motion asserting that he was unable to respond to defendants' motion because of defendants' failure to respond to his discovery.

5. Thereafter plaintiff was granted leave to conduct discovery necessary for him to respond to defendants' summary judgment motion.

6. Plaintiff served discovery which defendants' counsel did not consider "necessary" for him to respond to defendants' summary judgment motion and so counsel did not respond to it. Plaintiff sought sanctions for this refusal and his motion was granted. Defendants complied with the Court's order directing them to serve responses to certain of plaintiff's discovery.

7. Plaintiff eventually filed briefs opposing defendants' motion and the motion is ripe for disposition.

8. A bench trial in this case is scheduled for January 31, 2005.

9. Defendants believe that a continuance of that trial is warranted.

10. For one thing, resolving defendants' motion for summary judgment might well obviate the need for trial. And, even if resolution of defendants' motion does not dispose of all of plaintiffs' claims, it would simplify and narrow any remaining issues and thereby reduce the time and resources of the Court and of the Department of Corrections needed for such a trial.

11. Another reason for continuing the trial is that plaintiff has just this week indicated an interest in amicably resolving his claims.

12. Given that plaintiff is a *pro se* prisoner who must communicate with counsel through the mails, settlement discussions are time-consuming.

13. Continuing the January, 2005 trial would afford counsel and her clients in the Department of Corrections with decision-making authority sufficient time to consider and respond to plaintiff's demand.

14. Defendants therefore ask the Court to continue the January 31, 2005 trial until after their motion for summary judgment has been resolved.

WHEREFORE, defendants ask the Court to grant their motion and continue the January 31, 2005 trial until after their motion for summary judgment has been resolved.

Respectfully submitted,

GERALD PAPPERT
Attorney General

By: s/Gwendolyn T. Mosley
GWENDOLYN T. MOSLEY
Senior Deputy Attorney General
Attorney I.D. No. 29157

Office of Attorney General
15th Floor, Strawberry Square
Litigation Section
Harrisburg, PA 17120
(717) 787-1179

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

Counsel for Defendants

Dated: January 13, 2005

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM BRANCH	:	
	:	
Plaintiff	:	No. 1:00-CV-1728
	:	
v.	:	(Judge Conner)
	:	
RUSSIAN, et al.,	:	
	:	
Defendants	:	ELECTRONICALLY FILED

CERTIFICATE OF SERVICE

I, Gwendolyn T. Mosley, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on January 13, 2005, I caused to be served a true and correct copy of the foregoing document titled "Defendants' Motion for Continuance of Trial," by depositing it in the United States Mail, first-class postage prepaid to the following:

**William Branch, CF 3756
SCI-Waymart
P.O. Box 256
Waymart, PA 18472**

**s/GWENDOLYN T. MOSLEY
Gwendolyn T. Mosley
Senior Deputy Attorney General**